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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/619,300

07/14/2003

Gene D. Burdette

20228

6294

28133

7590

07/27/2004

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EXAMINER

HAYES, BRET C

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,300

Applicant(s)

BURDETTE ET AL.

Examiner

Bret C Hayes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 6, 7 and 11 – 16 and 18 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,487,991 B2 to So.
3. Re – claim 1, So discloses the invention as claimed. So discloses a device comprising at least one launching mechanism (see Title, for example) comprising at least two movable members **14a, 14b** biased in opposing directions, the launching mechanism is affixed to a mounting base **11** of an enclosure **10**, a latching mechanism **22** is associated with the members **14a, 14b** for holding the members **14a, 14b** in the closed, armed position. the members **14a, 14b** having a material **16** affixed to ends of the members **14a, 14b**, the material **16** comprising a loop, depending and capturing, as claimed. The common knowledge or well known in the art statements are taken to be admitted prior art because Applicant either failed to traverse the examiner's assertion of Official Notice or did not request copies of offered references, and, so, the claims, or those limitations incorporated into other claims, stand as rejected from the previous office action. Examiner's position of the claimed latching mechanism being well known in the prior art cannot be overcome.
4. Re – claim 2, So discloses the launching mechanism being resettable.

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5. Re – claim 4, wherein a latching mechanism **22** is associated with the members **14a**, **14b** for holding the members **14a**, **14b** in the closed, armed position. While So does not disclose a latching plate and latch hook, per se, So does disclose the latching mechanism **22** rotating to allow members **14a**, **14b** to be released. Examiner's position of the claimed latching mechanism being well known in the prior art cannot be overcome.

6. Re – claims 6 and 7, So discloses a solenoid **70** for actuating the device. However, So does not disclose an electrical (Nickel/Titanium alloy) wire actuating the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the claimed electrical wire for the solenoid, since the equivalence of a Nickel/Titanium alloy wire and a solenoid for their use in the actuation art and the selection of any known equivalents to a solenoid would be within the level of ordinary skill in the art.

7. Re – claim 11, So discloses the claimed invention except for the projectile being paintballs, hollow thermoplastic balls, metal/elastomeric BB's, soap/rubber pellets, Buckshot or other simulated munitions. The use of these as projectiles is well known in the war gaming art and would have been obvious to one having ordinary skill in the art at the time the invention was made.

8. Re – claim 12, So discloses the claimed invention except for making the material removable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the material removable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

9. Re – claim 13, So discloses the claimed invention as applied above except for one member being movable and another being fixed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have one member being movable and another being fixed, since the equivalence of both members being movable and only one member being movable for their use in the catapulting art and the selection of any known equivalents to both members being movable would be within the level of ordinary skill in the art.
10. Re – claim 14, So discloses the launching mechanism being resettable.
11. Re – claim 15, see claim 11 above.
12. Re – claim 16, So discloses the claimed invention except for there being an array of launching mechanisms. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an array, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.
13. Re – claims 18 and 19, So discloses the claimed invention except for an array being actuated either simultaneously or sequentially. It would have been obvious to one having ordinary skill in the art at the time the invention was made to so actuate an array, since actuation of arrays must be only any of simultaneous, sequential or random.
14. Re – claim 20, see claim 11 above.
15. Claim 1 is alternatively rejected under 35 U.S.C. § 103 as being unpatentable over So in view of US Patent No. 2,974,954 to Martin.
16. Re – claim 1, So discloses the invention substantially as claimed as applied above. However, So does not disclose a latch plate being affixed to a cover of an enclosure. Martin

teaches latch means **40** being affixed to a cover **15** of an enclosure in the same field of endeavor for the purpose of latching. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify So to include the latch means as taught by Martin in order to latch a cover of an enclosure.

17. Claims 5 and 17 rejected under 35 U.S.C. § 103 as being unpatentable over So, either alone or in view of Martin as applied above, in view of US Patent No. 3,831,521 to Engeli.

18. So discloses the invention substantially as claimed, as applied above. However, So does not disclose use of a trip wire to actuate the device. Engeli teaches a trip wire *b* in the same field of endeavor for the purpose of actuating a mine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a trip wire as taught by Engeli in order to actuate the device.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (703) 306 – 4198. The fax number is (703) 872 – 9306.

bh

7/26/04


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER